87-2126

Supreme Court, U.S.
FILED
JUN 28 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

October Term, 1988

No.

STAR COLOR PLATE SERVICE,
DIVISION OF
EINHORN ENTERPRISES, INC.,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD
AND LOCAL ONE,
AMALGAMATED LITHOGRAPHERS
OF AMERICA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

1. Whether Star Color was properly ordered to bargain on demand with Local One, in derogation of the employees' right to refrain from union representation as guaranteed by Section 7 of the National Labor Relations Act, 29 U.S.C. Section 157, where only two of the twenty present employees actually voted in the ancient election due to the Board's egregious delay.

2. Whether the Court of Appeals for the Second Circuit improperly concluded that fewer policies of the National Labor Relations Act are frustrated by enforcement rather than by nonenforcement of the bargaining order, based upon erroneous conclusions of law and improper balancing of equities.

3. Whether Star Color was properly ordered to bargain on demand with Local 1, where the Court failed to remand the case to the Board to determine the appropriateness of a bargaining order upon employees who do not necessarily support the Union.

DESIGNATION OF CORPORATE RELATIONSHIPS

Star Color Plate Service, filing this Petition for a Writ of Certiorari as Petitioner in this proceeding, states that:

This is its original Designation of Corporate Relationships.

Its full name is Star Color Plate Service, Inc.

Star Color Plate Service, Inc. is not owned by any parent corporation.

Star Color Plate Service, Inc. does not have an ownership interest in any subsidiaries.

Star Color Plate Service, Inc. does not have any affiliates.

(Dated: June 15, 1988)

TABLE OF CONTENTS

Page

Citation to Opinion Below 1

Jurisdiction 1

Statutes Involved 1

Statement of the Case 1

Statement of the Case 4

Existence of Jurisdiction Below 6

Reasons for Granting the Writ 7

I. The decision of the Second Circuit Court of Appeals upholding the order of the National Labor Relations Board requiring Petitioner to bargain with the Union is inconsistent with the federal labor policy embodied in Section 7 of the National Labor Relations Act affording employees the right to refrain from union representation 7

II. The Second Circuit Court of Appeals improperly balanced the competing policies of employee free choice with the setting aside of an election; the balancing should be settled by the Supreme Court of the United States as an issue of national importance 10

III. The decision of the Court of Appeals for the Second Circuit upholding the order of the National Labor Relations Board is inconsistent with the decisions of the United States Court of Appeals for the First Circuit inasmuch as the Court failed to remand the case to determine the current appropriateness of the bargaining order 14

Conclusion 14
Appendix 16
Opinion of the United States Court of Appeals—
Second Circuit A-1

Judgment of the United States Court of Appeals—
Second Circuit B-1

Decision and Order of the National Labor Relations
Board C-1

AUTHORITIES CITED

Cases **Page**

Brooks v. NLRB, 348 U.S. 96 (1954) 11, 12

Glomac Plastics, Inc. v. NLRB, 592 F.2d 94 (2nd Cir. 1979) 8,11,14

NLRB v. Flomatic Corp., 347 F.2d 74 (2d Cir. 1965) 8

NLRB v. H.P. Hood, Inc., 496 F.2d 575 (1st Cir. 1974) 8,11,14,15

NLRB (Fusco) v. Kaase Baking Co., 205 F. Supp. 465 (D.C. Ohio 1962) 10

NLRB v. Patent Trader, Inc., 426 F.2d 791 (2d Cir. 1970) (en banc) 8,10,11,12

NLRB v. Staub Cleaners, Inc., 418 F.2d 1086 (2d Cir. 1969) 9

NLRB v. St. Regis Paper Co., 674 F. 2d 104 (1st Cir. 1982) 14,15,16

Statute

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 88 Stat. 395, 29 U.S.C. Section 151, et seq.).

Section 7 (29 U.S.C. 157) 1, 7

Section 9 (c)(1) (29 U.S.C. 159 (c) (1)) 2,12

Section 9 (c)(3) (29 U.S.C. 159 (c) (3)) 2,12

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioner, Star Color Plate Service, Division of Einhorn Enterprises, Inc., prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Second Circuit issued in this case on March 30, 1988, insofar as and to the extent that decision granted the application of the National Labor Relations Board (the "Board") to enforce its order herein dated November 24, 1986.

OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit (Appendix, infra.), affirming the decision of the National Labor Relations Board, is officially reported at 843 F.2d 1507. The Decision and Order of the National Labor Relations Board is reported at 282 NLRB No. 31.

JURISDICTION

The judgment of the Court of Appeals for the Second Circuit was filed on April 26, 1988. (App. B, infra).

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254 (1).

STATUTES INVOLVED

The relevant provisions of the National Labor Relations Act, as amended 61 Stat. 136, 73 Stat. 519, 88 Stat. 395, 29 U.S.C. § 151 et seq. are the following:

National Labor Relations Act §7, 29 U.S.C. § 157:

Right of employees as to organization, collective bargaining, etc.

> Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities

except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in §158(a) (3) of this title.

National Labor Relations Act § 9(c) (1) and 9(c) (3), 29 U.S.C. § 159(c) (1) and (3):

Representatives and elections—
Exclusive representatives; employees' adjustment of grievances directly with employer

* * *

Hearings on questions affecting commerce; rules and regulations (c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in subsection (a) of this section, or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in subsection (a) of this section; or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to

him a claim to be recognized as the representative defined in subsection (a) of this section;

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

* * *

(3) No election shall be directed in any bargaining unit or any subdivision within which in the preceding twelve-month period, a valid election shall have been held. Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this subchapter in any election conducted within twelve months after the commencement of the strike. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

* * *

STATEMENT OF THE CASE

Petitioner, Star Color Plate Service, Division of Einhorn Enterprises, Inc., (hereinafter, "Star Color" or "the Employer") is a New York corporation engaged in lithographic production services. On August 29, 1980, the respondent, Local 1, Amalgamated Lithographers of America, International Typographical Union, AFL-CIO (hereinafter, the "Union" or "Local 1") filed a representation petition with the National Labor Relations Board, Region 29, in which it sought to represent Star Color's lithographic production employees. A representation election was directed on March 5, 1981, and was conducted on March 31, 1981. The result was 6 votes for the Union, 5 votes for the company, and 15 votes were challenged.

The respondent Union challenged 14 ballots of voters. On June 30, 1981, the Regional Director ordered that a hearing take place on the challenges of six votes, that the challenge to one vote be deferred, that the challenge to the ballots of seven voters be sustained, and that the challenge to one voter be overruled.

The respondent, not the Employer, requested review of the Regional Director's decision. Hearings were then conducted during the latter part of 1981 and during the month of January 1982.

The Administrative Law Judge (hereinafter "ALJ") did not issue a decision until March 17, 1983, approximately two years after the election. Challenges to the contested ballots were sustained. Star Color filed timely exceptions and a supporting brief with the NLRB on or about April 8, 1983. The General Counsel and the Union filed cross-exceptions and supporting briefs.

On April 28, 1986, more than three years after the ALJ's decision and more than five years after the actual election, the Board certified the Union as the exclusive bargaining representative in the appropriate unit. The Board unnecessarily and with no apparent concern for the impact that its outrageous delay would have on the question of the rights of the employees held the case for three years and one month. This glaring lapse of time was in no way caused by the Employer.

Shortly thereafter, the Company, on May 20, 1986, timely filed with the Board a motion for reconsideration and/or to reopen the record and for a stay of enforcement of the Board's decision. The Company sought to introduce evidence showing that there had been a significant turnover in the appropriate bargaining unit. Specifically, the data indicated that only two of the 18 employees in the appropriate bargaining unit at the time of the election remained at the Company. The Company contended that a certification in 1986 of a 1981 election was inappropriate because the Union did not necessarily have the support of a majority of the unit employees. The employees would be saddled with a Union of which they never had any knowledge.

The Board denied the Employer's motion. There was no discussion; there was no analysis; there was no factfinding. The Board's decision summarily and cursorily denied the motion as lacking merit. Star Color was given no opportunity to argue nor present evidence that was unavailable at the time of the prior proceeding.

The General Counsel then transferred the case to the Board for Partial Summary Judgment. The Employer in its Opposition to Summary Judgment raised the never-litigated issue of whether it can properly refuse to bargain based upon

the five year hiatus between the representation election and the bargaining order in light of changed factors.

The Board granted General Counsel's motion for Partial Summary Judgment, stating that all issues raised by the Company were or could have been litigated in the prior representation proceeding. (This rationale failed to consider that it is impossible to raise conditions as they exist in 1986 in an earlier 1981 proceeding). Despite the fact that the granting of summary judgment resulted in the total absence of an opportunity for the Employer to be heard with respect to the underlying unresolved issues, the NLRB issued its decision and order reported at 282 NLRB No. 31, on November 24, 1986 (5 yrs and 8 months after the initial election). [App. C infra.]

On September 15, 1987, the Board filed an application with the Second Circuit Court of Appeals for enforcement of its bargaining order. The case was orally argued on January 6, 1988 and the Court rendered its decision on March 30, 1988. (App. A. infra.) Because the Court concluded that fewer policies were frustrated by enforcement than by nonenforcement, the Court enforced the bargaining order. The Court admitted that its decision is contrary to the policies of the Act but sought to mitigate that result by requiring the Board to give actual notice to the employees of their decertification rights. However, the Court did not specify when the employees could exercise those rights. The judgment was filed on April 26, 1988. (App. B infra).

EXISTENCE OF THE JURISDICTION BELOW

The Court of Appeals for the Second Circuit had jurisdiction over the Board's application for enforcement under Section 10(e) of the National Labor Relations Act, 29 U.S.C. Section 10(e).

REASONS FOR GRANTING THE WRIT

I.

THE DECISION OF THE SECOND CIRCUIT COURT OF APPEALS UPHOLDING THE ORDER OF THE NATIONAL LABOR RELATIONS BOARD REQUIRING PETITIONER TO BARGAIN WITH THE UNION IS INCONSISTENT WITH THE FEDERAL LABOR POLICY EMBODIED IN SECTION 7 OF THE NATIONAL LABOR RELATIONS ACT AFFORDING EMPLOYEES THE RIGHT TO REFRAIN FROM UNION REPRESENTATION.

To best protect employee rights, national labor policy dictates that employees not have union representation forced upon them when, by exercise of their free will, they might have chosen otherwise. Section 7 of the National Labor Relations Act specifically grants employees the right to refrain from joining labor organizations. National Labor Relations Act Section 7, 29 U.S.C. Section 157.

The result of an enforcement of the National Labor Relations Board's bargaining order in this case is the requirement that Star Color bargain with Local 1. Such an outcome is plainly and manifestly unfair to the current employee complement and in total derogation of national labor policy. It is a *prima facie* violation of the rights of the current employees. Only two of the approximately twenty employees that would be forced to be represented by Local 1 in negotiations actually voted in the ancient election. It is also undeterminable whether those two individuals voted for or against the Union.

This bargaining order unnecessarily undermines the freedom of choice that Congress sought to guarantee the employees, and, thus, frustrates rather than effectuates the policies of the Act. In fashioning a remedy, therefore, the right of the employees freely to choose their bargaining representative must be of paramount importance. *See, NLRB v. Flomatic Corp.*, 347 F.2d 74, 78 (2d Cir. 1965). Bargaining orders are so inimical to free choice that the Second Circuit Court of Appeals itself remanded a case to the Board to reconsider whether the entry of a bargaining order was appropriate notwithstanding that a valid election had been held. *See, Glomac Plastics, Inc. v. NLRB*, 592 F.2d 94 (2d Cir. 1979). Therefore, it is the Second Circuit's own view that even under the rule of *Patent Trader*, 426 F.2d 791 (2d Cir. 1970) (en banc), a bargaining order should be scrutinized to determine its propriety. The First Circuit, too, will remand a case so that the Board may determine if a bargaining order should be entered on the basis of an ancient election. *See, NLRB v. H.P. Hood, Inc.*, 496 F.2d 575 (1st Cir. 1974). The conclusion is inescapable that the Court's order works an unlawful imposition upon the Company's current employees' Section 7 rights so zealously guarded by the Courts.

The Board does not contend that the Union actually has majority support today. Rather, the Board is relying upon a now seven-year old election in which only two of the present twenty employees voted. The policy of employee free choice in its purest form must override a stale election especially in view of the fact that the delay was caused solely by the Board's lethargic processes. The Board, which is supposed to facilitate the National Labor Relations Act's policy of encouraging collective bargaining by employees through representatives of their *own* choosing, has instead affirmatively trampled upon employee rights and has thrust upon the employees a union

not necessarily of choice. In effect, the Second Circuit Court of Appeals' decision undermines the election procedures which are designed to secure recognition based upon the choice of employees. Clearly, there is no basis whatever for supposing that the current employee complement desires Local 1 to act for them. *See, NLRB v. Staub Cleaners, Inc.*, 418 F.2d 1086, 1090 (2d Cir. 1969) (dissenting opinion).

It is time for the Supreme Court of the United States to put the Board on notice that Circuit Court of Appeals will not issue an order of enforcement in derogation of employee § 7 rights when it is apparent that the proposed order is inappropriate to the situation originally sought to be corrected. Vindication of employee rights coupled with a message to administrative agencies guilty of egregious delay should compel the Court to grant certiorari herein.

II.

THE SECOND CIRCUIT COURT OF APPEALS IMPROPERLY BALANCED THE COMPETING POLICIES OF EMPLOYEE FREE CHOICE WITH THE SETTING ASIDE OF AN ELECTION; THE BALANCING SHOULD BE SETTLED BY THE SUPREME COURT OF THE UNITED STATES AS AN ISSUE OF NATIONAL IMPORTANCE.

It is undisputed that the policy of the National Labor Relations Act is to encourage collective bargaining by employees through representatives of their own choosing. *NLRB (Fusco) v. Kaase Baking Co.*, 205 F. Supp. 465 (D.C. Ohio 1962). The Second Circuit Court of Appeals, however, chose to frustrate this policy by enforcing the Board's bargaining order. The Circuit Court concluded that fewer policies were frustrated by enforcement than by nonenforcement and, therefore, chose the former. (App. A-4)

The Court identified as the major competing policy the objective of not conducting a second election where an election has already been held. Citing *Patent Trader, supra,* the Circuit Court maintained that an employer would be given "an incentive to disregard its duty to bargain in the hope that over a period of time a union would lose its majority status." (App. A-5) This reliance on *Patent Trader* is misplaced.

In the case at bar, the Union's majority status was questionable long before the Company refused to bargain. Thus the Circuit Court was not dealing with the situation of allowing an employer to profit from its own refusal to bargain. The inordinate delay and related turnover occurred long before the Employer exercised its right to refuse to bargain.

Patent Trader should be applicable only to cases where the employer caused the delay because of an illegal refusal to bargain following a timely election which *thereafter* led to a loss of majority. It should not be extended to this case, where the employer merely exercised its statutory right to administrative review and due process, and the Board itself unnecessarily and egregiously caused the delay.

Moreover, the Second Circuit did not give proper weight to the factor that bargaining orders are a drastic remedy and therefore should be analyzed at the time they issue. *See, Glomac* and *Hood, supra.* The Circuit Court turned aside Star Color's alternative prayer to remand the case for the agency to consider the appropriateness of the bargaining order upon the present employee complement. Star Color did not suggest that the Board reconsider whether unusual circumstances existed so as to relieve the employer of the duty to bargain. Rather, Star Color asked that the Board be required to examine a possible new election as a procedure which would necessarily produce a better reflection of the desires of the current employees.

The Second Circuit's reliance upon *Brooks v. NLRB*, 348 U.S. 96 (1954), was also misplaced. The issue in *Brooks* was the duty of an employer toward a duly certified bargaining agent if, *shortly* after the election which resulted in the certification, the union has lost, without the employer's fault, a majority of the employees from its membership. *Brooks*, at 98. Any reliance on *Brooks* ignores the very essence of why *Star Color* is a case of national importance, namely, the issue of egregious administrative delay. The basic premise of *Brooks* that a union enjoys a one-year bargaining period rests upon the premise that the certification was timely, and that the election result applies to the employees then affected. The

reasoning employed in *Brooks* is inapposite to a union certified five years after an election which cannot claim to represent employees who never voted in the election.

The Court of Appeals admitted realizing that its decision "may impose a bargaining representative that is not wanted by a majority of employees and that this result is contrary to the Act." (App. A-8) Citing *Patent Trader* again, it then asserted that such a violation of coveted § 7 rights could be rectified by a requirement that the Board give actual notice to the current employees of their statutory right to petition for a decertification election. *See, Patent Trader*, at 793. It is submitted that this attempt at mitigation is not meaningful and does not cure the problem of the statutory intent of protecting employees' rights of free choice being overridden.

The statutory framework to petition for a decertification election is embodied in § 9 of the Act. *See*, 29 U.S.C. § 159(c) (1) (A) (ii). The Act allows an election petition to be filed by employees who assert that the current union is no longer desired by employees. However, § 9(c) (3) precludes elections where in the preceding twelve-month period a valid election was held. 29 U.S.C. § 159(c) (3). Even if the post-election period is not tolled by the delay, the *Brooks* insulation rule would also bar an election petition. Thus, the only possible mitigation afforded by decertification rights in this instance would be if those rights could be implemented immediately. Mere notification to the employees of a right they cannot timely exercise is an act of futility creating only the illusion of relief.

Finally, the Second Circuit's decision to enforce the bargaining order because ordering another election would send the parties back to the Board's glacial processes, is unsupportable in both law and equity. To deny employees their

§ 7 rights in this case constitutes nothing less than a surrender to administrative delay no matter how shocking, and in effect it amounts to a rewrite of the statute. Substantive rights should not be required to succumb to agency failures in procedure.

The Circuit Court expressed the fear that allowing a second election would run the risk of producing another round in the future of administrative delay. (App. A-8) But this is the very reason why the Court should have denied enforcement in the first instance. Certiorari should be granted to rectify this situation.

III.

THE DECISION OF THE COURT OF APPEALS FOR THE SECOND CIRCUIT UPHOLDING THE ORDER OF THE NATIONAL LABOR RELATIONS BOARD IS INCONSISTENT WITH THE DECISIONS OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT INASMUCH AS THE COURT FAILED TO REMAND THE CASE TO DETERMINE THE CURRENT APPROPRIATENESS OF THE BARGAINING ORDER.

The Second Circuit Court of Appeals failed to remand this case to the Board to consider and make specific findings as to the appropriateness of a bargaining order upon the current employee complement, despite the fact that the First Circuit has done so in cases involving employee turnover and passage of time. *See, NLRB v. H.P. Hood, Inc.*, 496 F.2d 515 (1st Cir. 1974); *NLRB v. St. Regis Paper Co.*, 674 F.2d 104 (1st Cir. 1982). Indeed, the Second Circuit has also recognized this principle in a prior case, though it did not apply it here. *Glomac Plastics, Inc. v. NLRB*, 592 F.2d 94 (2d Cir. 1979).

In *Hood*, above, an election was held in October 1968. Five and one half years elapsed while the Board dealt with refusal to bargain charges based upon a conflict of interest question. Notwithstanding that the Court affirmed the Board's conclusion that the employer committed an unfair labor practice, and, furthermore, notwithstanding the fact that the Union never had an opportunity to exercise its post-certification bargaining rights, the First Circuit remanded the case for further consideration. The Court specifically remanded the case so that the Board could deal with the question of whether

a bargaining order should be entered on the basis of an election which was held approximately five and one half years ago. *Hood*, at 520.

Just as in *Star Color*, the lapse of time stemmed from the Board's egregious delay during the administrative process. Noting the equities involved, the First Circuit stated,

> Even though we have upheld the Board, we think that under the circumstances the Board should have the opportunity prior to outright enforcement of the bargaining order to consider whether entry of the order remains appropriate. While this means an additional lapse of time in these already hoary proceedings, we think fairness will be better served than by immediately locking the parties into a lengthy relationship on the basis of ancient events. (footnote omitted)
>
> *Hood*, at 520.

Thus the Court adhered to the philosophy of the Act that employees be represented by an agent of their choice. In a situation which fails to necessarily reflect the selection of a union by the employees affected, the First Circuit will remand a case in accordance with the intent of the Act.

Similarly, in *NLRB v. St. Regis Paper Co., supra*, a union was certified as the exclusive bargaining representative of a unit at a main garage. The Board later found that a maintenance garage constituted an accretion to the existing unit at the main garage. More than five years passed between the ALJ's "accretion" decision and the Court's review.

The bargaining order sought would have required the company to bargain with employees who were never in the Union. The Court noted that this would "require the

Company to bargain in a unit at which there is little or no basis for assuming the union today enjoys the support of any of the employees." *St. Regis*, at 109 (citations omitted).

This is especially true in the instant case where only two of the twenty current employees actually voted in the ancient election. The Act is best effectuated by considering a request for enforcement of a bargaining order in light of "present realities." *St. Regis*, at 109.

The Second Circuit's enforcement of a bargaining order where its current applicability is in doubt, and where it is in conflict with the decisions of the First Circuit, should compel this Court to grant certiorari herein.

CONCLUSIONS

For the reasons set forth above, the petition should be granted.

Dated: Carle Place, N.Y.
June 15, 1988

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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 535 August Term, 1987
(Argued January 6, 1988 Decided March 30, 1988)

Docket No. 87-4122

NATIONAL LABOR RELATIONS BOARD,

Petitioner

v.

STAR COLOR PLATE SERVICE, DIVISION OF EINHORN ENTERPRISES, INC.,

Respondent,

LOCAL ONE, AMALGAMATED LITHOGRAPHERS OF AMERICA,

Intervenor.

Before:
VAN GRAAFEILAND, WINTER and ALTIMARI,
Circuit Judges.

Petition for enforcement of a bargaining order. The employer contends that the bargaining order should not be enforced because more than five years elapsed between the election and the Board's certification decision.

Enforced.

MARTIN H. SCHER, Carle Place, New York,
for Respondent.

DAVID A. FLEISCHER, National Labor Relations Board, Washington, D.C.
(Rosemary M. Collyer, General Counsel,

John E. Higgins, Jr., Deputy General Counsel,
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National Labor Relations Board,
Washington, D.C., of counsel), *for Petitioner.*

MARK D. RISK, New York, New York
(Michael F. O'Toole, Steven M. Stimell,
Robinson, Silverman, Pearce, Aronsohn &
Berman, New York, New York, of counsel),
for Intervenor.

WINTER, *Circuit Judge:*

This petition raises the question of whether we should deny enforcement of a bargaining order because of an egregious delay between the election and the certification of the union by the National Labor Relations Board. Because more than five years have elapsed between the certification election and the Board's order certifying the union, only a few of the employees who voted in the election are still in the bargaining unit. Nevertheless, we conclude that even where the delay in question is due to the Board's dilatory approach to its statutory responsibilities[1], we must enforce the order.

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[1] This is not an isolated instance of delay. *See NLRB v. Synergy Gas Corp.*, No. 87-4131 (2d Cir. 1988), filed this day.

BACKGROUND

Respondent Star Color Plate Service, Division of Einhorn Enterprises, Inc. is a New York corporation engaged in lithographic production services. On August 29, 1980, Local One of the Amalgamated Lithographers of America filed a representation petition seeking to represent the lithographic production employees at Star Color's Jamaica, New York plant. A representation election was held on March 31, 1981. There were eleven uncontested votes, six in favor of Local One, five in favor of another union. Fifteen votes were challenged, fourteen by Local One and one by the Board.

On June 30, 1981, the Regional Director sustained Local One's challenges to seven votes, overruled one challenge,[2] and consolidated the remaining ballot challenges with unfair labor practice charges leveled by the union. On various dates between July 13, 1981 and January 18, 1982, a hearing was held before an administrative law judge ("ALJ"). On March 17, 1983, the ALJ sustained the challenges to the remaining seven ballots on the grounds that Star Color had deliberately "packed" the bargaining unit in order to dilute the union's strength in the election. Star Color filed timely exceptions with the Board. On April 28, 1986, more than five years after the election and almost three years after the ALJ's decision, the Board adopted the ALJ's recommendation and certified Local One as the bargaining representative. On May 20, 1986, Star Color moved the Board to reconsider and/or to reopen the record to show the high turnover among the employees in the bargaining unit. On June 19, 1986, the Board denied the motion as lacking in merit.

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[2] On review, the Board reinstated the challenge to this ballot.

Local One had originally requested that the company bargain with it in May 1986, but the company refused because of the motion for reconsideration. After the denial of the motion, Local One again requested that Star Color bargain. Star Color again refused. The Board issued a complaint alleging a refusal to bargain in violation of § 8(a)(1) and (5) of the National Labor Relations Act, 29 U.S.C. § 158(a)(1), (5) (1982). On November 24, 1986, the Board granted summary judgment against Star Color. The Board specifically noted that passage of time and employee turnover did not create sufficiently "special" or "unusual" circumstances to require the Board either to reexamine its decision made in the representation proceeding or to relieve the company of its obligation to bargain with the union.

DISCUSSION

Star Color argues that the Board's order should not be enforced because the passage of time between the certification election and the high turnover of employees in the bargaining unit have cast doubt upon the majority status of Local One. According to Star Color, enforcing the order would undermine employee freedom of choice and thereby frustrate rather than effectuate the policies of the Act. We believe that frustration of the policies of the Act is an inevitable result of the egregious administrative delay in this case no matter how we rule. Because we conclude that fewer policies are frustrated by enforcement than by nonenforcement, we choose the former.

A union that has been certified by the Board as a bargaining representative after a representation election normally enjoys an irrebuttable presumption of majority status for one year following the certification, even if the union no longer enjoys majority support. *Brooks v. NLRB*, 348 U.S. 96, 104 (1954);

NLRB v. Accurate Web, Inc., 818 F.2d 273, 275 (2nd Cir. 1987) per curiam.) If the employer refuses to bargain with the certified union, the Board may extend the certification year so that it does not commence until the employer begins to bargain in good faith. *NLRB v. All Brand Printing Corp.*, 594 F.2d 926, 929 (2d Cir. 1979).

There are, however, "unusual circumstances" in which the irrebuttable presumption will not apply, for example, where a certified union has dissolved and no longer exists, *Public Serv. Elec. & Gas Co.*, 59 N.L.R.B. 325, 327 (1944), or where a collective bargaining agreement with a duration of less than one year has expired, *Ludlow Typograph Co.*, 108 N.L.R.B. 1463, 1465 (1954). Apparent loss of majority status and delay in certification do not normally constitute "unusual circumstances." In *NLRB v. Patent Trader, Inc.*, 426 F.2d 791 (2d Cir. 1970) (in banc), there was both passage of time and "repudiation" of the union by a majority of the employees. Nevertheless, a unanimous in banc court held that "it is error to refuse to enforce a bargaining order when it is conceded that there has been a Board election, the Union was duly certified, and the Company thereafter refused to bargain in good faith." *Id.* at 792. We reached this conclusion because "[r]equiring still another Board election in such a situation undermines the central purpose of the National Labor Relations Act, since it gives an employer an incentive to disregard its duty to bargain in the hope that over a period of time a union will lose its majority status." *Id.*

In *Glomac Plastics, Inc. v. NLRB*, 592 F.2d 94 (2d Cir. 1979), almost six years had passed since the original certification, and four and one-half of those years were attributable to the Boards' delay. *Id.* at 101. Glomac made the argument now advanced by Star Color that the bargaining order should not

be enforced because enforcement would deny the employees the right freely to choose their own representative. *Id.* While we found this argument to have "considerable appeal" "[a]t first blush," we rejected it in favor of the rule and rationale of *Patent Trader*. *Id.* at 101-102. Nevertheless, to be "fair to all concerned" we withheld enforcement of the bargaining order for sixty days and remanded to the Board to give it a chance to reconsider its ruling. On remand, the Board accepted as accurate the company's "principal claims of substantial employee turnover in the unit and/or abandonment of the unit by the Union." *Glomac Plastics, Inc. v. NLRB*, 600 F.2d 3, 4 (2d Cir. 1979). Nevertheless, the Board reaffirmed its bargaining order, and we enforced. *Id.*

We find Star Color's efforts to distinguish *Patent Trader* unconvincing. Several cases cited by the company are inapposite because they involved bargaining orders issued where there had never been a representation election, *see, e.g., NLRB v. Pace Oldsmobile, Inc.*, 739 F.2d 108, 110 (2d Cir. 1984); *NLRB v. Marion Rohr Corp.*, 714 F.2d 228, 230 (2d Cir. 1983), or the Union had lost the election, *NLRB v. Knogo Corp.*, 727 F.2d 55, 58 (2d Cir. 1984).

Only two cases have come to our attention in which passage of time and possible employee turnover justified a refusal to enforce a bargaining order within a post-election certification year. *NLRB v. Connecticut Foundry Co.*, 688 F.2d 871 (2d Cir. 1982) and *NLRB v. Nixon Gear, Inc.*, 649 F.2d 906 (2d Cir. 1981). In both, however, we refused to enforce the bargaining order because the Board had abused its discretion when it failed to hold hearings on prima facie valid post-election challenges by the employers, which, if upheld, would have required the setting aside of the representation elections.

Connecticut Foundry, 688 F.2d at 876-77, *Nixon Gear*, 649 F.2d at 912. Passage of time and employee turnover were relevant in those cases because our only options were remanding to the Board and thus extending the delay or outright denial of enforcement. We did not have, as we have here, the option of enforcing the bargaining order. Moreover, delay and turnover supported denial in *Connecticut Foundry* and *Nixon Gear* because fading memories and unavailable witnesses might preclude the possibility of a fair hearing and a reliable determination of the challenges to the election. *Connecticut Foundry*, 688 F.2d at 881; *Nixon Gear*, 649 F.2d at 914.

As a fallback position, Star Color argues that even if this case is controlled by *Patent Trader*, we should follow the procedure in *Glomac Plastics* and remand to the Board for further consideration rather than enforce the order. We decline to do so. It is clear that the Board has already considered and rejected Star Color's argument that changed circumstances on account of passage of time and employee turnover constituted "unusual circumstances" relieving it of the duty to bargain in good faith during the certification year. Thus, a remand would be an "idle and useless formality," *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759, 766 n.6 (1969) (plurality opinion), further increasing the already egregious delay in this case.[3] Indeed, we believe it now clear that the

[3] We reject the company's attempts to raise for the first time in its reply brief the question of whether the Board erred by refusing to count certain ballots cast in the representation election. While this issue was raised in the original representation proceeding, it was not raised in the unfair labor practice proceeding. Appellate review of this issue is therefore barred under § 10(e) of the Act, 29 U.S.C. § 160(e) (1982). Furthermore, the company's subsequent failure to present this claim in its original brief before this court provides an independent ground under Fed. R. App. P. 28(a)(2) for our refusal to hear this claim. *See Amoco Overseas Oil v. Compagnie Nationale Algerienne de Navigation*, 605 F.2d 648, 653 n.3 (2d Cir. 1979).

Board will never view its own predictable delay as "unusual circumstances" calling for a new election.

We realize that our decision may impose a bargaining representative that is not wanted by a majority of employees and that this result is contrary to the policies of the Act. This result can be mitigated by the Board's giving actual notice to the current employees of their statutory right to petition for a decertification election. *Patent Trader*, 426 F.2d at 793. Our enforcement order will become effective when such notice is given. Were we to deny enforcement and order another election, we would merely be sending the parties back to the Board's glacial processes with no assurance that years from now a certification based on a second election that will not be challenged on exactly the same grounds. That result would similarly undermine policies of the Act. We therefore follow *Patent Trader* in the hope that enforcement will marginally reduce the incentive of employers to take advantage of the Board's inexcusably slow processes.

Enforced.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

STAR COLOR PLATE SERVICE,
DIVISION OF EINHORN ENTERPRISES, INC.,

Respondent,

and

LOCAL ONE, AMALGAMATED
LITHOGRAPHERS OF AMERICA,

Intervenor.

No. 87-4122

United States Court of Appeals
Second Circuit
FILED
APR 26, 1988
Elaine B. Goldsmith, Clerk

JUDGMENT

Before: VAN GRAAFEILAND, WINTER and ALTIMARI, *Circuit Judges*

THIS CAUSE came on to be heard upon the application of the National Labor Relations Board for the enforcement of a certain order issued by it against Respondent, Star Color Plate Service, Division of Einhorn Enterprises, Inc., Jamaica, New York, its officers, agents, successors, and assigns on 24 November 1986. The Court heard argument of respective counsel on 6 January 1988, and has considered the briefs and

transcript of record filed in this cause. On 30 March 1988, the Court, being fully advised of the premises, handed down its opinion granting enforcement of the Board's order. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the Court that Respondent, Star Color Plate Service, Division of Einhorn Enterprises, Inc., Jamaica, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain with Local 1, Amalgamated Lithographers of America, International Typographical Union, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act (hereinafter called the Act).

2. Take the following affirmative action which the Board has found necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All lithographic production employees employed by the Employer at its facility located on Jamaica

Ave., Jamaica, New York, excluding drivers, messengers, clerical employees, guards, and supervisors within the meaning of the Act.

(b) Post at its facility in Jamaica, New York, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 29 of the National Labor Relations Board (Brooklyn, New York), after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the said Regional Director, in writing, within 20 days from the date of this Judgment what steps the Respondent has taken to comply.

Each party shall bear its own costs.

RALPH K. WINTER
Judge, United States Court of
Appeals for the Second Circuit

FRANK X. ALTIMARI
Judge, United States Court of
Appeals for the Second Circuit

FILED: April 26, 1988

APPENDIX

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT,
ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 1, Amalgamated Lithographers of America, International Typographical Union, AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All lithographic production employees employed by the Employer at its facility located on Jamaica Ave., Jamaica, New York, excluding drivers, messengers, clerical employees, guards, and supervisors within the meaning of the Act.

Employees, pursuant to § 9(c) (1) of the National Labor Relations Act, may petition the National Labor Relations Board for an election to decertify and remove the Union as their bargaining representative. The filing of such a petition can only be done as the voluntary act and choice of the employees and on their own initiative, without coercion, encouragement or assistance from management. All applicable rules, regulations and standards for conducting such an election must be met.

STAR COLOR PLATE SERVICE,
DIVISION OF EINHORN ENTERPRISES, INC.

_____

(Employer)

Dated _____

By _____

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Brooklyn, New York 11241, Telephone 718-656-2862.

282 NLRB No. 31

DJS
D-4133
Jamaica, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR
RELATIONS BOARD

STAR COLOR PLATE SERVICE, DIVISION OF EINHORN ENTERPRISES, INC.

and

LOCAL 1, AMALGAMATED LITHOGRAPHERS OF AMERICA, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO

Case 29-CA-12416

DECISION AND ORDER

Upon a charge filed by the Union 13 May 1986, the General Counsel of the National Labor Relations Board issued a complaint 24 June 1986 against the Company, the Respondent, alleging that it has violated Section 8(a) (5) and (1) of the National Labor Relations Act.

The complaint alleges that on 28 April 1986, following a Board election in Case 29-RC-5121, the Union was certified as the exclusive collective-bargaining representative of the Company's employees in the unit found appropriate. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's rules and regulations, Secs. 102.68 and 102.69(g), amended Sept. 9, 1981, 46 Fed. Reg. 45922 (1981); *Frontier Hotel*, 265 NLRB 343 (1982).)

The complaint further alleges that since 14 May 1986, the Company has refused to bargain with the Union. The complaint also alleges that since 14 May 1986, the Company has failed and refused to furnish the Union with information requested by it necessary and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the unit. On 8 July 1986, the Company filed its answer admitting in part and denying in part the allegations in the complaint.

On 2 September 1986 the General Counsel filed a Motion for Partial Summary Judgment and Issuance of Decision and Order, and on 18 September 1986 the General Counsel filed an amendment to its motion.[1] On 19 September 1986 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Partial Summary Judgment

The Company's answer denies that it has refused to bargain with the Union. The Company admits, however, that by letter dated 24 June 1986 the Union requested to begin negotiations, and that it sent a letter to the Union dated 30 June 1986 stating that it would not commence negotiations with the Union until the Company's position with respect to representation was litigated. The Company denies that it

[1] The General Counsel, in that amendment, deleted any argument that summary judgment should be granted with respect to the allegation that the Company refused to furnish information. Thus the General Counsel's motion is limited to the allegation that the Respondent refused to bargain.

acted unlawfully and asserts an affirmative defense that the complaint fails to state a valid 8(a)(5) and (1) violation of the Act, because it is based on an unlawful Decision, Order, and Certification of Representative by the Board. The General Counsel argues that all material issues have been previously decided. We agree with the General Counsel.

The record, including the record in Case 29-RC-5121, reveals that pursuant to a Decision and Direction of Election issued by the Regional Director, an election was conducted on 31 March 1981. The tally of ballots shows that 6 votes were cast for the Union, Local 1, 5 votes were cast for the Intervenor, no votes were cast against the participating labor organizations, and 15 votes were challenged.[2] In addition, the Union on 7 April 1981 filed timely objections to the conduct of the election.

On 30 June 1981 the Regional Director issued a supplemental decision, order consolidating cases, and notice of hearing in Cases 29—RC—5121, 29—CA—8280, 29—CA—8407, 29—CA—8796, and 29—CA-8811—2, in which he directed that a hearing be conducted on the challenges to the ballots of six voters, that the challenge to one voter be

[2] The ballots of four voters were challenged on the basis that they were not employees of the Employer, two voters on the basis that they were irregular part-time employees, four voters on the basis that they were not part of the voting unit, and four voters on the basis that they were supervisors within the meaning of the Act. The Board agent challenged the remaining voter whose name did not appear on the voting eligibility list.

deferred pending the disposition of Case 29—CA—8407, that the challenges to the ballots of seven voters be sustained, and that the challenge to the ballot of one voter be overruled. The Regional Director further ordered that Cases 29—CA—8280, 29—CA—8407, 29—CA—8796, 29—CA—8811—2, and 29—RC—5121 be consolidated for the purpose of hearing, ruling, and a decision by an administrative law judge, and that thereafter Case 29—RC—5121 be transferred and continued before the Board in Washington, D.C. Pursuant to a request for review filed by the Union of the Regional Director's supplemental decision, order consolidating cases, and notice of hearing, the Board on 31 August 1981, denied the request for review, except that the Board concluded that one challenge to the ballot sustained by the Regional Director be consolidated with the other challenges and objections set for hearing.

On various dates between 13 July 1981 and 18 January 1982, a consolidated hearing was conducted before a duly designated administrative law judge on the issues raised in Case 29—RC—5121, and on the issues raised by the complaints and notices of hearing in Cases 29—CA—8280, 29—CA—8407, 29—CA—8796, and 29—CA—8811—2, as amended by the Board on 31 August 1981.

On 17 March 1983 the decision of the administrative law judge issued in which he recommended to the Board that the remaining challenges be sustained. On 28 April 1986 the Board issued its Decision, Order, and Certification of Representative[3] in which it certified the Union as the exclusive bargaining representative in the appropriate unit.

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[3] *279 NLRB No. 82 (Apr. 28, 1986).*

On 20 May 1986 the Company filed with the Board a motion for reconsideration and/or to reopen the record and for a stay of enforcement of the Board's decision in 279 NLRB No. 82 (Apr. 28, 1986), on the grounds that it would be unfair to enforce a bargaining order with regard to a unit in which the election had been held over 5 years previously and where there had been significant employee turnover because the Union might not currently have the support of a majority of the unit employees. The Respondent moved to reopen the record in order to present further information regarding four employees and the sustained challenges to their ballots, and the remedial obligation regarding one employee discriminatee who is allegedly no longer employed by the Company. The Board issued an Order on 18 June 1986 denying the Company's motion.[4]

In its response to the General Counsel's Motion for Partial Summary Judgment, the Company reiterates its contention that it can legitimately refuse to bargain based on the 5-year hiatus between the representation election and certification in light of the significant employee turnover.

It is well settled that in the absence of newly discovered and previously unavailable evidence or special circumstances, a respondent in a proceeding alleging a violation of § 8(a)(5) is not entitled to relitigate issues that were or could have been litigated in a prior representation proceeding. See *Pittsburgh Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941); Secs. 102.67(f) and 102.69(c) of the Board's Rules and Regulations.

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[4] The Board noted that Respondent may raise the issue of the remedial obligation to the one employee discriminatee at the compliance stage of that proceeding. That issue is not involved herein.

All issues raised by the Company were or could have been litigated in the prior representation proceeding. The Company does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Company has not raised any issue that is properly litigable in this unfair labor practice proceeding.[5] Accordingly we grant the Motion for Partial Summary Judgment.

SUMMARY JUDGMENT

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Company, a New York State corporation, is engaged

[5] The cases cited by the Respondent in which the United States Court of Appeals for the Second Circuit refused to uphold bargaining orders issued by the Board are distinguishable. In *NLRB v. J. Coty Messenger Service*, 763 F.2d 92, 101-102 (2d Cir. 1985), and *NLRB v. Marion Rohr Corp.*, 714 F.2d 228, 230-232 (2d Cir. 1983), the Board had issued bargaining orders after reaching determinations that fair elections could not be held. The Second Circuit refused to enforce these orders, based on the passage of time and employee turnover, and because the clearly preferred method for determining a majority representative is an election. In the instant case, the Union was certified by the Board as the exclusive representative since the Union won the majority of the valid ballots cast in a fair election. It is well settled that the initial 1-year period of certification begins the date the respondent begins to bargain in good faith with the union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965). In addition, the Board concludes that the circumstances presented by the Respondent in its opposition to the General Counsel's Motion for Partial Summary Judgment do not constitute "unusual circumstances" within the meaning of *Ray Brooks v. NLRB*, 348 U.S. 96 (1954), which would relieve it of the obligation to bargain with the Union.

in the manufacture, nonretail sale, and distribution of lithographic plates, film, and related products, at its facility in Jamaica, New York, where it annually purchases and receives at its facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of New York. We find that the Company is an employer engaged in commerce within the meaning of § 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of § 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. *The Certification*

Following the election held 31 March 1981 the Union was certified as the collective-bargaining representative of the employees in the following appropriate unit:

> All lithographic production employees employed by the Employer at its facility located on Jamaica Ave., Jamaica, New York, excluding drivers, messengers, clerical employees, guards, and supervisors within the meaning of the Act.

The Union continues to be the exclusive representative under § 9(a) of the Act.

B. *Refusal to Bargain*

Since 6 May 1986 the Union has requested the Company to bargain, and since 30 June 1986 the Company has refused.[6] We find that this refusal constitutes an unlawful refusal to bargain in violation of § 8(a) (5) and (1) of the Act.

Conclusions of Law

By refusing on and after 30 June 1986 to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Company has engaged in unfair labor practices affecting commerce within the meaning of § 8(a) (5) and (1) and § 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has violated § 8(a) (5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good

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[6] The complaint alleges that the Respondent has refused to bargain with the Union since on or about 14 May 1986. However, by letter dated 14 May 1986, the Respondent notified the Union it declined to commence negotiations because it had decided to file a motion for reconsideration with the Board. On 18 June 1986 the Board denied the Respondent's motion. Subsequently, the Union again requested negotiations with Respondent by letter dated 24 June 1986. Respondent's letter dated 30 June 1986 advised the Union that it would not commence negotiations. Without deciding whether Respondent's 14 May 1986 letter constituted an unlawful refusal to bargain, we find that the 30 June 1986 letter clearly constituted such a refusal.

faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Star Color Plate Service, Division of Einhorn Enterprises, Inc., Jamaica, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 1, Amalgamated Lithographers of America, International Typographical Union, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by § 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All lithographic production employees employed by the Employer at its facility located on Jamaica Ave., Jamaica, New York, excluding drivers, messengers, clerical employees, guards, and supervisors within the meaning of the Act.

(b) Post at its facility in Jamaica, New York, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days

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[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. 24 November 1986

Donald L. Dotson, Chairman

Wilford W. Johansen, Member

James M. Stephens, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 1, Amalgamated Lithographers of America, International Typographical Union, AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by § 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All lithographic production employees employed by the Employer at its facility located on Jamaica Ave., Jamaica, New York, excluding drivers,

messengers, clerical employees, guards, and supervisors within the meaning of the Act.

STAR COLOR PLATE SERVICE, DIVISION
OF EINHORN ENTERPRISES, INC.

_____
(Employer)

Dated By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Brooklyn, New York 11241, Telephone 718-656-2862.